

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

DAVID A. STEBBINS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 1:14cv1267
	)	
RONALD CARTER, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NOTICE REGARDING DEFENDANTS' INITIAL MOTION TO DISMISS**

On June 8, 2015, defendants filed a motion to dismiss plaintiff's original complaint in this action, with an accompanying memorandum of law in support of the motion (Dkt. Nos. 35-39). In response, on June 16, 2015, plaintiff filed two papers with this Court: (1) a response to defendants' motion to dismiss (Dkt. No. 41); and (2) an amended complaint (Dkt. No. 40). Plaintiff's amended complaint expressly "incorporate[s] by reference" all of "[t]he contents of Plaintiff's original complaint." Am. Complaint, ¶1. But that amended complaint also adds a *new* cause of action under the Rehabilitation Act, which is based solely on the defendants' citation, in their motion to dismiss papers, to an order issued by another federal judge regarding plaintiff's abusive litigation behavior in a Rehabilitation Act case. Id. ¶¶3-6.

The Fourth Circuit has held that "[a]s a general rule, 'an amended complaint ordinarily supersedes the original and renders it of no effect.'" Young v. City of Mount Ranier, 238 F.3d 567, 572 (4<sup>th</sup> Cir. 2001) (quoting Cryson/Montenay Energy Co. v. Shell Oil Co., 226 F.3d 160, 162 (2d Cir. 2000)). This is especially the case when the amended complaint adds a *new* cause of action that was not present in the initial complaint. See, e.g., Byng v. Campbell, 2009 WL 152708, at \*1 (N.D.N.Y. Jan. 21, 2009); Lord v. Living Bridges, 1999 WL 528833, at \*3 (E.D.

Pa. July 22, 1999).<sup>1</sup> As such, although the identical dispositive problems remain with respect to plaintiff's constitutional and common law (*i.e.*, Federal Tort Claims Act) claims, the addition of a new claim – notwithstanding its frivolous nature, see 28 U.S.C. § 1915(e) – thus causes the amended complaint to supersede the original complaint. This renders the defendants' initial motion to dismiss moot.

Accordingly, in the interest of avoiding confusion and promoting efficiency in the disposition of this action, defendants have – simultaneously with the instant notice – filed a new motion to dismiss plaintiffs' *amended* complaint. That motion to dismiss is *identical* in all respects to defendants' initial motion to dismiss, with the exception of arguments concerning plaintiff's new Rehabilitation Act claim. Defendants thus expect plaintiff to file an identical opposition, with the exception of additional opposition arguments concerning that new Rehabilitation Act claim. And to accommodate these new filings, defendants will re-notice their motion to dismiss for July 24, 2015.

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<sup>1</sup> Given plaintiff's *pro se* status, defendants have attached copies of these two decisions to as Exhibit A to this notice.

Respectfully submitted,

DANA J. BOENTE  
UNITED STATES ATTORNEY

By:                     /s/                      
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DATE: June 24, 2015

ATTORNEYS FOR DEFENDANTS

OF COUNSEL: Ed Bordley  
United States Marshals Service

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and will transmit a true and correct copy of the foregoing to the following non-user via first-class mail:

David Stebbins  
123 W. Ridge Street, Apt. D  
Harrison, Arkansas 72601

Date: June 24, 2015

/s/  
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